BAIL SLIP

The Appellant in Crl.A.No.1274/2004 namely Ramachandran was directed to be released on bail as per order of this Court dated 23.11.2004 and made in Crl.M.P.No.10816/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2006

CORAM

THE HONOURABLE MR JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 1274 of 2004

Ramachandran ... Appellant/Accused-1

Vs

State rep. by Inspector of Police,
Papparapatti Police Station,
Dharmapuri District. ... Respondent/Complainant
(Crime No.130/94)

Prayer: Appeal against the judgment passed by the learned Additional Sessions Judge, Dharmapuri, in S.C.No.278 of 2002 dated : 21.09.2004.

For Appellant : Mr.S.V.Udayakumar

For Respondent : Mr.P.Kumaresan
Addl. Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

Challenging the judgment of the Additional Sessions Division, Dharmapuri District at Krishnagiri, made in S.C.No.278 of 2002, whereby, the appellant/A-1 along with two other accused ranked as A-2 and A-3 stood charged, tried and found guilty as per the charge of murder and awarded life imprisonment along with a fine of Rs.1000/- with default sentence of one year rigorous imprisonment, this appeal has been brought forth by the appellant/A-1.

2. The short facts necessary for the disposal of this appeal can be stated thus:-

i.P.W.1 is a resident of Errapatti. P.W.2 is his father. P.W.3 is

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the wife of P.W.1. Chetti alias Vediappan, the deceased in the case, is the brother of P.W.1. In front of the house of A-1, P.W.1 was running a petty shop and this was objected to by A-1. A Panchayat was convened, wherein it was decided that since the land, in which, P.W.1 was running a petty shop, belongs to Highways Department, P.W.1 need not remove the shop and despite the same, the quarrel continued. Whenever the quarrel ensued, the deceased used to intervene in the quarrel and talk in favour of his brother, P.W.1. A-1 warned the deceased on number of occasions and informed P.W.1 also that if his brother continued to do so, one day he will finish him off.

ii.On the date of occurrence, viz., 22.4.1994 at about 8.00 p.m., P.Ws.1 to 3 witnessed all the three accused along with the deceased went to the Brandy shop of A-3 and consumed liquor. At that time, P.W.1 asked the deceased to go to the house. Thereafter, all the three accused took the deceased to a temple and on the 'Balipeeda' (gypgPlk;), the deceased was done to death and thereafter, all the accused fled away from the place of occurrence. This was witnessed by P.Ws.5 and 6.

iii.According to P.W.1, on the next day morning at about 10.00 a.m. he saw the his brother, the deceased, lying dead with injuries. Thereafter, he went to the Village Administrative Officer and gave a report, Ex.P-1. The Village Administrative Officer went to Papparapatti Police Station and gave a complaint at 11.30 a.m. on 23.4.1994 to P.W.14, the Sub Inspector of Police, who was on duty at that time, on the strength of which, P.W.14 registered a case in Crime No.330 of 1994 under Section 302 IPC. Ex.P-16 is the printed first information report. Exs.P-1 and P-16 were sent to Court as well as to the higher officials.

iv.Investigation in this case was taken up by the Inspector of Police, Papparapatti Police Station, who, on receipt of the first information report, took up investigation, proceeded to the place of occurrence at 1.00 p.m., made an inspection and prepared an observation mahazar, Ex.P-2, and drew a rough sketch, Ex.P-17. He also recovered the material objects including the blood stained earth and sample earth from the place of occurrence. Between 2.00 p.m. and 4.00 a.m. on 23.4.2002, he conducted inquest over the dead body in the presence of witnesses and Panchayatdars and prepared Ex.P-18, the inquest report. Thereafter, the dead body was sent with a requisition to the doctor for conducting post-mortem.

v.On receipt of the requisition, P.W.8, the doctor, attached to Government Hospital, Dharmpuri, conducted autopsy on the dead body and gave his opinion in Ex.P-9, the post-mortem certificate, opining that the deceased died due to respiratory arrest due to the injuries to the spinal cord.

vi.During investigation, the Investigator examined witnesses and

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recorded their statements. He also recovered the material objects, which were produced by the Police Constable, under Form-95. Thereafter, he came to know that on 25.4.1994, A-3 in this case surrendered before the Court. On 2.5.1994 at about 3.0 p.m., A-2 in this case was arrested by the Investigator in the presence of witnesses and when questioned, A-2 volunteered to give a confessional statement, the admissible portion of which has been marked as Ex.P-4 and pursuant to the same, he produced M.O.9, Koduval, which was seized under a cover of mahazar Ex.P-5. On the same day, the Investigator arrested A-1 at Pallipatti Bus Stop. Thereafter, both A-1 and A-2 were brought to the police station and later, they were sent for judicial custody. The investigator obtained police custody of A-3 and when questioned, A-3 gave a confessional statement and the admissible portion of which has been marked as Ex.P-6, pursuant to which, he produced a blood-stained shirt, which was also recovered. Thereafter, all the material objects, which were recovered from the place of occurrence, from the dead body and which were produced by the accused, pursuant to their confession statements, were all sent to Court to subject them for chemical analysis and accordingly, Exs.P-13, the Chemical Analyst's report and P-14, the Serologist's report were obtained. On completion of the investigation, the investigator filed the final report on 22.11.1996.

3. The case was committed to the Court of Sessions. Necessary charges were framed and in order to substantiate the charges, the prosecution has examined 14 witnesses and relied on 19 exhibits and marked 12 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. On the side of the defence, neither a witness was examined nor a document was marked. After hearing the arguments advanced by both sides and on scrutiny of the materials available, the trial Court found the accused guilty as per the charge and awarded imprisonment as referred to above, which is the subject matter of challenge before this Court by the appellant/A-1.

4. The learned Counsel, while assailing the judgment of the lower Court, made the following submissions:-

a) In the instant case, the prosecution rested its case on the direct evidence of P.Ws.5 and 6, but they have turned hostile.

b) The other circumstance relied on by the prosecution was the last seen theory projected from the evidence of P.Ws.1 to 3. The learned counsel would submit that according to P.Ws.1 to 3, on the date of occurrence, viz., 22.4.1994 at about 8.00 p.m., they saw all the three accused along with the deceased went to the Brandy shop of A-3 and consumed liquor and at that time, P.Ws.1 and 3 asked the deceased to go to his house and thereafter, the occurrence has taken place during

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the night hours. The learned counsel further add that merely because the deceased was seen in the company of the accused at 8.00 p.m. on 22.4.1994, at no stretch of imagination, it can be inferred that the accused had committed the murder of the deceased.

c) Yet another circumstance relied on by the prosecution was the confessional statements alleged to have been given by A-2 and A-3, pursuant to which, M.Os.9 and 11, a koduval, the weapon of offence and a blood-stained shirt respectively, were recovered. It is pertinent to point out that the confessional statements given by A-2 and A-3 cannot bind A-1 and there is no incriminating circumstance to implicate A-1 in this case, nor any confessional statement has been obtained from A-1. According to the learned counsel, there is no material against A-1 and even as per the prosecution case, it was A-3, who cut the deceased along with A-2 and thus, there is no material available for the prosecution to connect A-1/appellant with the crime and hence, the lower Court should have acquitted A-1 by rejecting the case of the prosecution and under such circumstances, A-1 is entitled for acquittal in the hands of this Court.

5. The Court heard the learned Additional Public Prosecutor appearing for the State on the above contentions.

6. The Court paid its anxious consideration to the submissions made and thoroughly scrutinised the available materials. It is not in controversy that Chetti alias Vediappan, the brother of P.W.1, died out of homicidal violence and in order to substantiate that the deceased died out of homicidal violence, the prosecution has examined P.W.8 the doctor, who conducted post-mortem and who issued the post-mortem certificate, Ex.P-9, wherein he has opined that the deceased died due to respiratory arrest due to the injuries to the spinal cord. Apart from that, the said fact was not disputed by A-1/appellant either before the trial Court or before this Court and hence, without any difficulty, it could be concluded that the deceased died out of homicidal violence.

7. In the instant case, the prosecution rested its case on the direct evidence of P.Ws.5 and 6, who are the alleged eye witnesses. According to P.Ws.5 and 6, while A-1 catching hold of the hands of the deceased and A-2 catching hold of the legs of the deceased, A-3 attacked him with a koduval on his head and neck and caused his death. Both P.W.5 and 6 have turned hostile. Thus, the prosecution could not rely on the direct evidence of P.Ws.5 and 6.

8. The other circumstance relied on by the prosecution was the alleged confessional statements made by A-2 and A-3 to the Investigator, pursuant to which, the weapon of crime, on production by A-2 and the blood-stained shirt, on production by A-3, were recovered. It is needless to say that the confessional statements alleged to have been given by A-2 and A-3 would not bind A-1. Apart from this, neither a confessional statement was recorded from A-1 nor any incriminating

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circumstance has been brought forth by the prosecution to implicate A-1 in the crime.

9. Thus, what was now available for the prosecution was the medical opinion canvassed by the prosecution to show that the deceased died due to homicidal violence. It can be well stated that the prosecution had neither direct evidence nor any incriminating circumstance pointing to the nexus of the crime with A-1 before the Court. Under such circumstances, the judgment of the lower Court in respect of A-1 has got to be set aside and it is, accordingly, set aside.

10. In the result, the appeal is allowed. The bail bond executed by the appellant/A-1 shall stand cancelled.

Sd/
Asst.Registrar

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Sub Asst.Registrar

bs/

To

1.The Judicial Magistrate, Pennagaram.
2.-do- through the Chief Judicial Magistrate, Dharmapuri at Krishnagiri.
3.The Additional Sessions Judge, Dharmapuri.
4.-do- through the Principal Sessions Judge, Dharmapuri at Krishnagiri.
5.The Inspector of Police, Papparapatti Town Police Station, Dharmapuri District.
6.The Superintendent, Central Prison, Vellore.
7.The District Collector, Dharmapuri District.
8.The Director General of Police, Madras.
9.The Public Prosecutor, High Court, Madras.

+1cc to Mr.S.V.Udayakumar, Advocate Sr 47981

TEJ (CO)
km/1.11.

Crl.A.No.1274 of 2004

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